IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1381 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT
Versus
KALUBHAI DHULABHAI PATEL

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Appearance :
MR KC SHAH APP for Appellant

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 11/09/2007

ORAL JUDGMENT (Per : HONOURABLE MR. JUSTICE J.R.VORA)

1 The above referred Criminal Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by Special Judge, District – Panchmahal at Godhra, on 29.3.2006 in Special Case No. 23 of 2005 (Atrocity) whereby present respondent being accused of Special Case came to be acquitted by the Trial Court for the offences punishable under Sections 504, 506(2) of the Indian Penal Code as well as for the offences punishable under Section 3(1)(10) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 According to the prosecution case, the incident in question occurred on 25.7.2005 and complaint (FIR) came to be recorded before SC & ST Cell, District – Panchmahal at Godhra, on 14th of August, 2005, at 13.45 hours. Accordingly, though complainant Jivabhai Lebabhai was Civil Engineer, but he could not find proper job and was doing agricultural work at his village Vandarved, Taluka – Khanpur. Lebabhai Nathabhai, father of the complainant - Jivabhai Lebabhai Vankar, had purchased one agricultural land, bearing Survey No. 5, from father of present respondent and one Kuberbhai Haridas, for Rs. 8,000/- in 1967. However, Dhulabhai Haridas and his son present respondent did not execute sale documents. The father of the complainant Lebabhai Nathabhai was cultivating the land and, therefore, present respondent

filed a Civil Suit in the Court of Civil Judge, (JD) at Lunawada, being Civil Suit No. 49 of 1990. In the said suit, the evidence of plaintiff was over and the evidence of defendant i.e. present complainant and his father was to be recorded, and for that, witnesses were to be examined on 21st of July, 2005. According to the complainant, he requested witnesses to attend the Court on 21st of July, 2005, but on account of threats administered by the present respondent, none of the witnesses attended in the Court in the said Civil Suit to support the case of present complainant. On the day of incident, i.e. on 25th of July, 2004, at about 4.00 p.m. complainant Jivabhai Lebabhai was doing agricultural work in the disputed land and he found respondent passing through the road situated nearby the land. Complainant Jivabhai Lebabhai, therefore, went towards the road, accosted the respondent and scolded him that why the respondent was preventing the witnesses of the complainant from coming to the court. Respondent thereupon got excited and uttered words insulting the caste of the complainant and further threatened that complainant had to vacant the land, otherwise, he would be done to death. The respondent also uttered abuses to the complainant. Witnesses Raghuvir Madansinh Gadhvi was working in his field, immediately came along with brothers of complainant, named as, Manabhai Lebabhai and Mithabhai Lebabhai. The respondent also insulted brothers of the complainant about their

caste and gave abuses. According to the complainant, his wife was sick and, therefore, on 4th of August, 2005, he got one application typed and sent to the police for necessary action. Thereafter, he was busy with social work and his wife was sick and therefore he went to Khanpur Police Station for giving complaint on 14th of August, 2005. The said complaint was registered by Khanpur Police Station and investigation was handed over to Dy. S.P. Mr. Pande. After investigation, a charge sheet came to be submitted against the respondent in the court of Judicial Magistrate, First Class, at Lunavada. Thereafter, this special case was committed to the Special Court, which was numbered as Special Case No. 23 of 2005.

3 Charge came to be framed against the respondent by learned Special Judge on 12th of January, 2006 at Exhibit – 2, which was read over to the respondent and respondent pleaded not guilty and, hence, the prosecution examined as many as eight witnesses and produced on record six documents to prove its case. Ultimately, after recording the statement of the Respondent under Section 313 of the Code of Criminal Procedure wherein respondent took a stand to deny the prosecution evidence in toto and further stated that on account of pending civil dispute, a false case was filed against him and thereafter hearing both the sides, learned Trail Judge came to the conclusion to

acquit the respondent and, hence, this Appeal.

4 Learned APP Mr. K.C. Shah for the appellant State was heard in detail at this juncture also and we have gone through the record and proceedings of the Trial Court thoroughly. We have called for the Record and Proceedings from the Trial Court, which is available with us. Learned APP Mr. Shah also assisted this Court with extra copies of the evidence recorded during trial and the copies of the documents. We have carefully examined the appreciation of evidence undertaken by the Trail Court and the reasons assigned for acquitting the respondent as well as reasonable probabilities arising out of the evidence recorded during the trial. We have carefully scanned each corner of the matter.

5 Referring to the evidence of prosecution, PW-1 Balwantsinh Jivatsinh Charn, examined at Exhibit – 49, is panch of panchnama of scene of offence produced at Exhibit-10 and he has not supported the prosecution case in any respect. PW-2 Madhavbhai Somabhai Patel, examined at Exhibit-11, produced on record vide Exhibit – 12 certificate to the effect that the complainant belonged to scheduled caste. PW-2 happened to be Social Welfare Officer of District Panchmahal. PW-3 Virabhai Dhanabhai Vankar, examined at Exhibit – 14, is a second panch of panchnama at Exhibit–10 and he has

not supported the prosecution case in any respect. PW-4 Raghuvir Madansinh Gadhvi, examined at Exhibit-15, being an eye witness of the incident, did not support the prosecution case at all and stated that a civil dispute was pending between the parties, but he did not know about the incident. He was declared hostile by the prosecution and was cross-examined. PW-5 Manabhai Lebabhai Vankar, examined at Exhibit – 16, is an eye witness and real brother of the complainant. According to him, at the time of incident, he was doing agricultural work in his land and he found that respondent and his brother complainant were quarrelling. Respondent was abusing complainant and was insulting their caste and had threatened that they would be driven out of the land in question. Thereafter, Raghuvir came there and pacified the respondent. In his cross-examination he admitted that a civil suit was pending between the parties, in which the court granted interim stay in the favour of the respondent. The threats administered by the respondent about driving them out of the land has not been mentioned by this witness in his police statement. PW-6 Mithabhai Lebabhai Vankar, examined at Exhibit–17, is also an eye witness and real brother of the complainant. According to him, he was also doing agricultural work in his field and found that his brother and respondent were quarrelling. Respondent insulted their caste and thereafter respondent was persuaded and pacified. He has been cross-examined

by the defence and he admitted that in his statement before the police he did not state that the respondent threatened to kill them and further threatened that why were they entering in the land. PW-7 Jivabhai Lebabhai Vankar, examined at Exhibit–18, is complainant and aggrieved party. He stated almost what was stated in his complaint about the incident and in his examination in cross of the defence, he admitted that the civil suit was pending between the parties, and in which interim stay was operating against the complainant and his father. He admitted that in the said suit, his deposition as well as deposition of his father was over and thereafter they had not filed any application for summoning of witnesses. Except, sending complaint by registered Post AD, he had not given any other complaint. He admitted that the application which he forwarded to the police station was sent after taking advice of an Advocate. He admitted that, in the said application, which was produced on record at the instance of defence at Exhibit-20, he had named other two accused. PW-8 Sureshchandra Umapati Pande, examined at Exhibit – 22, is the Investigating Officer, investigated the offence and submitted the charge sheet against the respondent.

6 This is all is the evidence of the prosecution.

7 The learned Trial Judge after appreciating the evidence,

came to the conclusion that, except, interested witnesses, i.e. complainant himself and his brothers, Manabhai Lebabhai and Mithabhai Lebabhai, there is no independent evidence about the incident, in which the respondent gave threats to the complainant and uttered words insulting the caste of the complainant. No abuses in specified terms could be proved by this witness and, therefore, the offence against the respondent under Section 504 of the I.P. Code, could not be proved. About the charge under Section 506(2) and the charge under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the learned Trial Judge came to the conclusion that it was an admitted fact between the parties that there was a civil dispute pending about the land before the Civil Court and interim stay was operating in favour of the respondent, and even then, according to the version of prosecution, complainant was doing agricultural work in the said land. This conduct of the complainant was against the law and in disrespect of the orders of the Civil Court and, therefore, his evidence could not be relied upon. According to the learned Trial Judge, the whole dispute had arisen from the fact that, according to the allegation of the complainant, the respondent was preventing the witnesses to depose in favour of the complainant and his father and naturally the witnesses would be the persons i.e. owners of the adjoining land. The father of the complainant could have

summoned witnesses to depose before the Court as their witnesses to the incident instead the complainant accosted the respondent on the road from the field, which was heavily disputed, and this conduct discredited the evidence of the complainant and his real brothers. The learned Trial Judge also came to the conclusion that in earlier application, which was sent by post by the complainant, one Muljibhai Khatubhai Patel was described as an accused and complainant admitted that this Muljibhai Khatubhai Patel also refused to give evidence in Civil Suit in support of the complainant. Learned Trial Judge came to the conclusion that these circumstances led to an inference that the said complaint had been filed by the complainant to pressurize the respondent and witnesses in the said civil suit.

7 When we probed the prosecution evidence further, we found that the First Information Report in this case came to be recorded on 14th of August, 2005 and the incident occurred on 25th of July, 2005. The excuses which the complainant has offered in his complaint about his wife being sick and since he was busy with the social work, he could not find time to file a complaint, appears to be feigning facts and a smoke-screen to conceal the late filing of FIR which appears clearly to be an after thought. When we appreciated the above mentioned circumstances i.e. of pending civil litigation, conduct of the

complainant and his brothers, at the time of the incident, witness being closely related to the complainant and FIR filed late, for which lame excuses were offered, we do not find reasons assigned by the Trial Judge for the acquittal, perverse, palpably erroneous, manifestly wrong or demonstrably unsustainable. No reliance could be placed on the deposition of the complainant and his real brothers as to the charges levelled against the respondent for the sound reasons given by the Trail Court and the circumstances and probabilities arising out of the proper appreciation of the evidence recorded.

8 We do not find that the judgment and order impugned in this Appeal warrants any interference even at this juncture after thorough and careful scrutiny of the matter and, hence, following order:

"Leave to Appeal refused. Appeal stands dismissed."

(J. R. VORA, J.)

(SMT. ABHILASHA KUMARI, J.)

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